

# Exhibit 46

## INVESTIGATIVE GUIDE

## INVESTIGATION-HOMICIDE

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Each and every homicide investigation presents an investigator with a unique set of facts and circumstances. As stated, the procedures are a general guide to homicide investigation. To allow for the uniqueness of homicide investigation, it should not be construed that this guide must be followed line by line in each and every investigation, or in the order presented.

## PROCEDURES:

- I. The Homicide Squad Detective is notified of an apparent homicide:
  - A. Notification is usually made by:
    1. The Duty Officer.
    2. General Service Squad.
    3. Patrol Officer/Supervisor.
    4. A Physician's Assistant or Assistant Medical Examiner.
- II. Notifications made by the Homicide Squad Detective prior to responding to the scene:
  - A. Team Supervisor.
  - B. Criminalistics Laboratory.
  - C. Identification Section.
  - D. Medical Examiner.
  - E. Assistant District Attorney from the Homicide Bureau.
  - F. Duty Officer, if he did not make the notification.
- III. When it is not apparent what type of investigation (Homicide, Suicide, Accidental, or Miscellaneous death investigation) a Homicide Detective is responding to, he will make notification to:
  - A. Team Supervisor.
  - B. As necessary from the scene after a determination has been made as to the type of investigation to be conducted.

## NOTE:

Many death investigations handled by the Homicide Squad are delayed due to the fact that a person may die several days or weeks after an incident. In many of these cases, the General Service Squad or Patrol has already done an investigation. The Homicide Squad Detective will have to determine, on a case by case basis, if other assist units such as Identification Section or the Criminalistics Laboratory should be notified and if their services would be beneficial to the investigation.

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- IV. Once an investigator is notified that a dead body has been found or that a homicide has taken place, he shall forthwith note the following:
- A. Date and time he was notified.
  - B. Location of the incident.
  - C. How was he notified and by whom.

NOTE:

Note taking is the very foundation of a good investigation. An investigator who keeps accurate, comprehensive and chronological notes will not only properly coordinate his investigation, but will structure the strongest case possible for presentation in court.

V. Arrival at the Homicide Crime Scene:

- A. Upon the investigator's arrival on the scene, he should note the following:
  - 1. Time of arrival.
  - 2. Exact location.
  - 3. Lighting conditions.
  - 4. Weather conditions.
  - 5. Central Complaint number assigned.
  - 6. Presence or absence of any lividity.
  - 7. Presence, if noticeable, of any rigor mortis.
- B. Make notifications:
  - 1. The family of the decedent should be notified as soon as possible, preferably by the lead detective.
  - 2. When appropriate, if suspect is not in custody make required NYSPIN notification via teletype.
  - 3. Public Information Bureau is to be notified as soon as possible and updated so that they can make newsworthy information available to the media.

VI. The Homicide Squad Detective who has been designated as the scene detective is responsible for the coordination of assist units and the proper processing of the scene. Those responsibilities include:

- A. Ensure that a crime scene perimeter is set up that will protect any evidence within that crime scene from contamination.
- B. Make sure that uniform personnel are properly deployed at a crime scene in order to prevent contamination or destruction of physical evidence.

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- C. Ensure that a log is being kept by uniform personnel to keep a record of all those who enter the scene and the time thereof.
- D. Exclude all persons from the crime scene who are not directly involved with and/or necessary to the crime scene investigation.
- E. Relay of information learned at the crime scene to the Team Supervisor, lead detective, and other assigned detectives.
- F. Coordination and deployment of any assist and specialized units.

## NOTE:

The scene detective should take charge of the crime scene upon his arrival. You must remember that the preliminary investigation at the crime scene is the most important and possibly the most sensitive aspect of a homicide investigation. The investigator must be extremely cautious in preserving the crime scene because what one might consider as the smallest and most insignificant detail may later turn out to be of vital importance to the case.

## VII. Processing the Homicide Scene:

- A. The scene detective makes an assessment of the crime scene with a forensic investigator from the Criminalistics Laboratory and an investigator from the Identification Section during a walk-through of the crime scene.
  - 1. After the walk-through is completed, a conference between the scene detective, Team Supervisor, forensic investigator and investigator from the Identification Section takes place. At this time it is determined how the scene will be processed and if additional specialized units or individuals are needed to assist with processing the scene to its full evidentiary potential.
  - 2. Determination regarding cause of death:
    - a. Note the obvious cause of death (i.e., stabbing, shooting, etc.) to aid in recovering evidence.
    - b. Guard against hasty conclusions concerning the cause, manner or mode of death.
    - c. Actual cause of death will be decided by the Medical Examiner.

## NOTE:

Subsequent to an autopsy, it may be determined that an apparent drowning subject was actually the victim of a shooting at another location and dumped in the water in an effort to dispose of the corpse.

- 3. If a family member is a suspect and the homicide took place in an open area of the home (e.g., den or kitchen), the suspect's room could be considered as a prime source of evidence recovery, as well as cleanup or utility areas (i.e., basements, bathrooms, laundryrooms, garages).

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4. Consider recovery of drain pipes to retrieve evidence (e.g., drugs, blood, hair, etc.).
  5. Conduct perimeter check of all homes and buildings to determine any forced entry or the absence of force.
  6. Determine if more than one crime scene exists. Was the subject murdered, where was he found? Was there an altercation earlier at another site?
  7. The Assistant District Attorney from the Homicide Bureau is consulted as to the necessity for a Consent to Search authorization or need for a Search Warrant.
- B. In most cases, the Identification Section will first videotape, then take still pictures of the entire crime scene.
1. Aerial photos of the crime scene should be taken, weather permitting.

## NOTE:

In some cases the Criminalistics Laboratory will immediately process the scene if there is a possibility that certain physical evidence could be destroyed, i.e., weather conditions.

- C. Once the overall photography is completed, the Criminalistics Laboratory and the scene detective will identify items of evidence or potential evidence. At this time Criminalistics Laboratory personnel will work in conjunction with Identification Section investigators who will start to examine the scene for latent prints.
1. All identified evidence and potential evidence is photographed by Identification Section investigators.
  2. Forensic investigators from the Criminalistics Laboratory are responsible for a diagram of the crime scene.
  3. All evidence and potential evidence is collected by Criminalistics Laboratory personnel and forwarded to the Laboratory for analysis.

## NOTE:

Certain evidence will first be forwarded to the Identification Section for examination of latent prints.

4. The crime scene detective is ultimately responsible to ensure that all evidence is documented both photographically and in writing and collected by Criminalistics Laboratory personnel. In the case of latent print evidence, he will ensure it is photographed and collected by the Identification Section investigator and forwarded to the Identification Section for comparison purposes.
- D. Vehicles that are part of the crime scene are photographed in place by Identification Section investigators, then impounded and transported to the impound yard.

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1. The Assistant District Attorney is consulted as to the need for Consent to Search on a Search Warrant.
  2. As soon as practical, the vehicle will be processed by an assigned Homicide Squad detective, Identification Section investigator and Criminalistics Laboratory personnel.
- E. Examination of the victim is usually done by an Assistant Medical Examiner at the scene. His examination is documented both photographically and in writing. Any items of evidence or potential evidence are collected by Criminalistics Laboratory personnel and forwarded for analysis.
1. The crime scene detective obtains a preliminary estimate as to the time of death and cause of death. He advises the Medical Examiner of any special precautions to be taken with the victim's hands, head, etc. (for further evidence recovery). The scene detective advises the Assistant Medical Examiner of the facts known thus far and evidence collected from the crime scene.
- F. Crime Scene Wrap-Up:
1. Ensure that the location is secure prior to leaving.
  2. Implement procedures for the continued protection of crime scene, if continued processing is planned.
  3. Notify Team Supervisor.

## VIII. Homicide Investigation:

- A. Dying Declaration: If the victim or suspect is still alive at the time the investigation is commenced, the assigned homicide detective should attempt to elicit a dying declaration from the victim or suspect. A dying declaration is extremely important as it helps to establish whether or not a crime took place. It also helps in the investigation of the circumstances surrounding the crime. It may serve to identify a suspect and is one of the few types of "Hearsay Evidence" which may be introduced at trial. (Reference to Dying Declaration Section of " Rules of Evidence" Chapter of the Detective Investigative Guide).
1. If possible, the investigator assigned to the victim or suspect should take a written statement and have the dying person sign it.
- B. Interviews:
1. A thorough neighborhood canvass should be conducted as soon as possible. The homicide investigator should attempt to obtain the name, date of birth, address, home telephone number, employment and employment phone number of every person interviewed. In addition, the homicide investigator should attempt to learn the names of all members of the household and their ages, whether at home at the time of interview or not. It is extremely important that all immediate neighbors be interviewed. The homicide investigator should return to the neighborhood as needed to ensure that the neighborhood canvass is thoroughly completed.

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2. Ambulance Crews and Hospital Staffs:

a. The ambulance crew that responds to the scene should provide the homicide investigator with their names, addresses, DOB's, telephone numbers and time of arrival.

1) Ascertain all the details of their activities at scene. The homicide investigator should note how they gained entry to the scene, anything they touched, any movement of the body, any observations and whether or not they observed anything at the scene.

b. Hospital staffs who received the body should be interviewed to determine the type of treatment administered and their observations of the victim.

1) If the hospital removed the victim's clothing it must be recovered and forwarded to the Criminalistics Laboratory for analysis.

2) If the hospital recovered evidence such as a bullet, knife, etc., the person who recovered same should give a written statement to the homicide detective in reference to recovery to maintain the chain of evidence. Said item will then be forwarded to the Identification Section or Criminalistics Laboratory by the homicide detective as necessary.

3. The homicide investigator must determine the identity of all witnesses at the scene.

a. Witnesses should be separated and individually interviewed.

b. Statements should be taken from witnesses as soon as practical.

4. Friends and associates of the victim may provide valuable background information about the victim. These friends and associates may disclose a possible suspect or motive for someone who wanted to kill the victim.

a. Written statements should be taken when critical information to the investigation is stated.

5. Victim's employer and co-workers can also provide valuable background information about the victim. The employer and co-workers may also disclose a possible suspect or motive to kill the victim.

a. Written statements should be taken when critical information to the investigation is stated.

6. The family of the victim is usually able to provide the most background information about the victim. The lead detective should form a close relationship to the victim's family.

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During the course of an investigation it is not unusual for a victim's family to obtain an investigative lead before the police. The relationship with the victim's family is critical so that their information is turned over to the investigator as soon as it becomes available.

7. Police personnel who respond to the scene:
  - a. Time of call.
  - b. Type of accident or incident responding to.
  - c. Observations of police officers.
  - d. Did they move or touch anything in the crime scene?
  - e. Did any suspect, victim, or witness make a statement to them?
  - f. All responding officers who were directly involved with the crime scene or investigation must document it on a Supplementary Report (PDCS 1084c)
- C. Background of the Victim or Suspect:
  1. Arrest Records, M.V., Soundex, Intelligence, etc.
  2. Employer.
  3. From interview of family.
    - a. Known friends and associates.
  4. Subpoena telephone records.
- D. Secure 911 and Communication tapes from Communications Bureau.
- E. Consider pen registers and/or traps, where appropriate.
- F. Attend the autopsy:
  1. During the autopsy, the investigator and the pathologist should exchange facts and views to help ascertain circumstances and mechanism of death.
  2. An investigator from the Identification Section will photograph and take major case prints of the victim. The Medical Examiner's photographer will also photograph the victim at various stages of the autopsy.
  3. A forensic investigator from the Criminalistics Laboratory will receive clothing and other physical evidence found in/on the victim.
- G. Conference with Assistant District Attorney assigned to the investigation, Criminalistics Laboratory and Identification Section.

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1. As soon as practical, the lead detective, scene detective and team supervisor, should meet with the above to conference and discuss the various evidence that was found at the crime scene and on the victim/suspect.
  2. The lead detective and scene detective should request a copy of the Criminalistics Laboratory's Evidence Recovery Sheet. This should be reviewed by both the scene detective and the lead detective. After the review, a written request for analysis (PL9) should be forwarded to the Criminalistics Laboratory. It is critical that the lead detective and scene detective communicate with the Identification Section and Criminalistics Laboratory so that these units are made fully aware of investigation requirements.
- H. Conference with Homicide Squad Team that is assigned to the investigation.
1. Should be done frequently so that each and every member is aware of all facts of the investigation and duplication of effort is kept minimal.
  2. The team supervisor along with the lead detective will give assignments to investigators.
    - a. Investigators are responsible to keep their own notes of what they have investigated as well as written reports (PDCS 1084c).
  3. Through conferencing, team members are able to make suggestions and present ideas that will further the investigation.
- I. Reports:
- A Death Report (PDCS 1002b) and Offense Report (PDCS1013c) are required by the lead detective. Applicable Supplementary reports are to be written by homicide detectives charged with that facet of the investigation.

### IX. Homicide Suspects:

#### A. In Custody:

#### NOTE:

If Uniform personnel have arrested the suspect, advise them to isolate the suspect and be mindful of taking notes (especially concerning spontaneous admissions).

1. The homicide detective will advise the suspect of his Constitutional Rights from a Rights Card (PDCS 1051). The suspect will be asked to read the card and initial it. The homicide investigator will also initial, date and indicate the time the rights were given on the card.
2. If the suspect agrees to waive his Constitutional Rights, the homicide detective may question him as to his participation in the crime.

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- a. In this stage of the investigation it is important that two (2) homicide detectives are present during all questioning.
- b. The assigned detective should attempt to take notes of admissions made by the suspect at the time of interview.
3. If the suspect admits to the crime, the homicide detective will ask the suspect to give a written statement of those admissions.
  - a. In the written statement, the suspect will again be given his Constitutional Rights. If he agrees to waive them he will initial all waivers. The written statement will be sworn to by the suspect and signed by him. It will be witnessed by the homicide detectives who are taking the written statement.
  - b. The detective should take as comprehensive a confession as is possible under the circumstances. Confessions need to be corroborated. Therefore, with the taking of a confession, another investigative phase begins - in order to recover evidence: Weapon (s), car(s), clothing, stolen goods, accomplices, telephone calls made to whom, why, etc.
4. The suspect will then be asked if he would be willing to make a statement about the crime under investigation on videotape. If he agrees to do so, the Assistant District Attorney assigned to the case will be notified.
5. All of the suspect's clothing is to be taken (preferably by a forensic investigator) and submitted to the Criminalistics Laboratory for analysis.
  - a. In addition the suspect's hands should be swabbed for a gunshot residue analysis test if applicable.
6. Exemplars (blood, hair, etc.) should be obtained from the suspect by a Physician's Assistant.
7. Stand-up photographs and major case prints of the suspect should be taken by an investigator from the Identification Section.
8. Arrest paperwork is completed by assigned Homicide Squad investigators.
9. A conference between the Assistant District Attorney and assigned homicide investigators takes place. Issues of the arrest and applicable Consent to Search and/or Search Warrants are discussed.
- B. Not in Custody:
  1. Conference between team supervisor, lead detective and Assistant District Attorney assigned to the case takes place regarding a question of probable cause to make an arrest of the suspect.

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2. If an arrest can legally be made, consideration should be given to advantages and disadvantages associated with the available timing choices.
- X. Assigned investigator notified supervisor of investigation and keeps the supervisor informed of investigative developments.
- XI. In the event that a supervisor is unavailable, the assigned investigator notifies Public Information Bureau as soon as practical upon arrival at homicide crime scene. Upon notification of delayed investigations, the Public Information Bureau is notified as soon as possible so they can be updated and make newsworthy information available to the media.
- XII. A lead detective should be designated/responsible for the investigation.
- XIII. A detective should be designated/responsible for the crime scene.
- XIV. A post scene conference with the scene detective, lead detective, Assistant District Attorney, Criminalistics Laboratory and Identification Section is an essential component of the investigation.
- XV. The Homicide Squad team should conference the investigation often so that all members are aware of the facts and that duplication of effort is kept minimal.
- XVI. Arrest plans regarding homicide suspects should be formulated with a supervisor to ensure safety.

RELATED PROCEDURES:

Investigative - General

Arrest - R&P's: 16/1-6.7, 8.3-9.11, 14.0-16.1, & 13/1.6

Evidence - Detective Division Memo: #89-5, #88-13, #88-6, #82-2

R&P's: 14/1-2.11, 4.0-5.37

Crime Scene - Detective Division Memo: #87-4, #79-1

R&P's: 14/3.0-3.5

Notifications: Executive Law, Sec. 221

R&P's: 13-21.7a